UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 5

POTOMAC DISPOSAL, INC.		
and		
JOSE FLORES AMAYA, AN INDIVIDUAL	Case	5-CA-91629
CONSTRUCTION AND GENERAL LABORERS LOCAL 657, AFFILIATED WITH LABORERS INTERNATIONAL UNION OF NORTH AMERICA	Cases	5-CA-92016 5-CA-93890 5-CA-93906 5-CA-94080 5-CA-95609 5-CA-97256
OSCAR HERNANDEZ, AN INDIVIDUAL	Case	5-CA-92279
BLANCA PORTILLO, AN INDIVIDUAL	Case	5-CA-94082
JORGE A. RIVAS-BONILLA, AN INDIVIDUAL	Case	5-CA-94478

ORDER CONSOLIDATING CASES, AMENDED CONSOLIDATED COMPLAINT, CONSOLIDATED COMPLAINT AND NOTICE OF HEARING

Upon a charge filed in Case 5-CA-91629, by Jose Flores Amaya, an individual, herein called Charging Party Amaya, in Case 5-CA-92016, by Construction and General Laborers Local 657, affiliated with Laborers International Union of North America, herein called the Union; and in Case 5-CA-92279, by Oscar Hernandez, an individual, herein called Charging Party Hernandez, a Consolidated Complaint and Notice of Hearing issued on January 30, 2013; and the Union has charged in Cases 5-CA-93890, 5-CA-93906, 5-CA-94080, 5-CA-95609, and 5-CA-97256; Blanca Portillo, an individual, herein called Charging Party Portillo, has charged in Case 5-CA-94082; and Jorge A. Rivas-Bonilla, an individual, herein called Charging Party Rivas, has charged in Case 5-CA-94478, that Potomac Disposal, Inc, herein called Respondent, has been engaging in unfair labor practices as set forth in the National Labor Relations Act, 29 U.S.C. § 151 et seq., herein called the Act. Based thereon, and in order to avoid unnecessary costs or delay,

the Acting General Counsel, by the undersigned, pursuant to Section 102.33 of the Rules and Regulations of the National Labor Relations Board, herein called the Board, ORDERS that these cases are consolidated.

These cases having been consolidated, the Acting General Counsel, by the undersigned Acting Regional Director, pursuant to Section 10(b) of the Act and Section 102.15 of the Board's Rules and Regulations of the National Labor Relations Board, issues this Order Consolidating Cases, Amended Consolidated Complaint, Consolidated Complaint and Notice of Hearing and alleges as follows:

1. (a) The charge in Case 5-CA-91629, was filed by Charging Party Flores on October 18, 2012, and a copy was served by mail on Respondent on October 19, 2012.

(b) The original charge in Case 5-CA-92016, was filed by the Union on October 24, 2012, and a copy was served by mail on Respondent on October 25, 2012.

(c) The first amended charge in Case 5-CA-92016, was filed by the Union on January 24, 2013, and a copy was served by mail on Respondent on January 25, 2013.

(d) The original charge in Case 5-CA-92279, was filed by Charging Party Hernandez on October 26, 2012, and a copy was served by mail on Respondent on October 31, 2012.

(e) The first amended charge in Case 5-CA-92279, was filed by Charging Party Hernandez on January 3, 2013, and a copy was served by mail on Respondent on the same date.

(f) The charge in Case 5-CA-93890, was filed by the Union on November 29, 2012, and a copy served by mail on Respondent on the same date and again on February 15, 2013.

(g) The charge in Case 5-CA-93906, was filed by the Union on November 29, 2012, and a copy served by mail on Respondent on the same date.

(h) The original charge in Case 5-CA-94080, was filed by the Union on December 3, 2012, and a copy served by mail on Respondent on the same date.

(i) The first amended charge in Case 5-CA-94080, was filed by the Union on February 25, 2013, and a copy was served by mail on Respondent on February 26, 2013.

(j) The charge in Case 5-CA-94082, was filed by Charging Party Portillo on December 3, 2012, and a copy served by mail on Respondent on the same date.

(k) The charge in Case 5-CA-94478, was filed by the Charging Party Rivas on December 7, 2012, and a copy served by mail on Respondent on December 10, 2012.

(l) The original charge in Case 5-CA-95609, was filed by the Union on December 28, 2012, and a copy served by mail on Respondent on the same date.

(m) The first amended charge in Case 5-CA-95609, was filed by the Union on February 25, 2013, and a copy was served by mail on Respondent on February 26, 2013.

(n) The charge in Case 5-CA-97256, was filed by the Union January 28, 2013, and a copy served by mail on Respondent on January 29, 2013.

2. (a) At all material times, Respondent, a Maryland corporation with an office and place of business in Gaithersburg, Maryland, herein called Respondent's facility, has been engaged in operating a recycling and refuse collection service.

(b) During the past twelve months, a representative period, Respondent furnished services valued in excess of $50,000 directly to the municipality of Montgomery County, Maryland.

(c) During the past twelve months, a representative period, the municipality of Montgomery County, Maryland, purchased and received products, goods and services valued in excess of $50,000 for use at its facilities within the State of Maryland directly from sources located outside the State of Maryland.

(d) During the past twelve months, a representative period, Respondent purchased and received at its Gaithersburg, Maryland facility, products, goods and services in excess of $50,000 directly from points located outside the State of Maryland.

(e) At all material times, Respondent has been an employer engaged in commerce within the meaning of Section 2(2), (6) and (7) of the Act.

3. At all material times, the Union has been a labor organization within the meaning of Section 2(5) of the Act.

4. (a) The following employees of Respondent, herein called the Unit, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

> All employees employed in the division of the company working under the garbage disposal contract with the government of Montgomery County, Maryland, but excluding all other employees, office clerical employees, professional employees, managerial employees, guards and supervisors as defined by the Act.

(b) Since on or about September 13, 2012, a majority of the Unit designated and selected the Union as their representative for the purposes of collective bargaining with Respondent.

(c) At all times since October 12, 2012, based on Section 9(a) of the Act, the Union has been the exclusive collective-bargaining representative of the Unit.

(d) On or about November 19, 2012, the Union, by letter, requested that Respondent recognize it as the exclusive collective-bargaining representative of the Unit and bargain collectively with the Union as the exclusive collective-bargaining representative of the Unit.

5. (a) At all material times, the following individuals have held the positions set forth opposite their respective names and have been supervisors of Respondent within the meaning of Section 2(11) of the Act and agents of Respondent within the meaning of Section 2(13) of the Act:

Carlos Castro	-	Area Supervisor
Evelio Hernandez	-	Area Supervisor
David Hobbs	-	Area Supervisor
Lee Levine	-	President
Stanley Levine	-	Vice-President
Thomas Mountain	-	Area Supervisor
Edgar Villeda	-	Safety Supervisor

(b) At all material times until December 14, 2012, David Levine held the position of Vice-President and was a supervisor of Respondent within the meaning of Section 2(11) of the Act and an agent of Respondent within the meaning of Section 2(13) of the Act:

6. On or about November 4, 2012, Respondent's employee, Charging Party Rivas, engaged in concerted activities with other employees for the purposes of mutual aid and protection, by:

(a) concertedly complaining to Respondent about work assignments; and

(b) ceasing work concertedly and engaging in a strike.

7. On or about October 12, 2012, Respondent, by Edgar Villeda at Respondent's facility:

(a) created an impression among its employees that their union activities were under surveillance by Respondent;

(b) interrogated employees about their union sympathies;

(c) threatened its employees with unspecified reprisals, if they supported the Union as their bargaining representative;

(d) threatened its employees with discharge by inviting them to quit their employment because of their support for the Union, and their concerted activities;

(e) by soliciting employee complaints and grievances, promised its employees increased benefits and improved terms and conditions of employment, if they refrained from concerted and union organizational activities;

(f) directed employees not to sign union authorization cards; and

(g) directed employees not to engage in concerted protected activities, such as voicing group concerns on behalf of other employees.

8. On or about October 15, 2012, Respondent, by David Levine and Edgar Villeda, at Respondent's facility, engaged in surveillance of employees engaged in union activities.

9. On or about October 18, 2012, Respondent, by Edgar Villeda at Respondent's facility:

(a) interrogated employees about their union sympathies and protected concerted activities; and

(b) by soliciting employee complaints and grievances, promised its employees increased benefits and improved terms and conditions of employment, if they refrained from concerted and union organizational activities.

10. On an occasion in or around about mid-November 2012, the exact date being presently unknown to the undersigned, Respondent, by Edgar Villeda at Respondent's facility:

(a) interrogated employees about their union sympathies and protected concerted activities; and

(b) threatened employees that it would change the method and frequency by which it paid employees if employees selected union representation.

11. On or about November 26, 2012, Respondent, by David Levine, via electronic posting on the social media network Facebook, threatened employees that Respondent would close Respondent's facility, if employees unionized.

12. On or about an occasion in or around late November 2012, Respondent, by Edgar Villeda, at Respondent's facility:

(a) promised employees that Respondent would grant benefits to employees, if employees rejected the Union;

(b) threatened employees with job loss, if employees selected the Union as their representative;

(c) coerced employees by stating that undocumented employees could not join the Union; and

(d) threatened employees that they would be reported to immigration authorities, if they selected union representation.

13. On several occasions during December 2012, including an occasion or about December 21, 2012, Respondent, by Edgar Villeda, at Respondent's facility, threatened employees that Respondent would decrease their pay, if employees selected union representation.

14. On or about December 21, 2012, Respondent, by Edgar Villeda, at Respondent's facility, by soliciting employee complaints and grievances, promised its employees increased benefits and improved terms and conditions of employment, if they refrained from concerted and union organizational activities.

15. (a) On or about October 12, 2012, Respondent discharged its employee Charging Party Flores.

(b) On or about October 15, 2012, Respondent, demoted and imposed more onerous working conditions on its employee Charging Party Hernandez.

(c) By the conduct described above in paragraph 8(b), Respondent caused the termination of its employee Charging Party Hernandez.

(d) On or about November 5, 2013, Respondent issued two written warnings to its employee Charging Party Rivas.

(e) On or about November 6, 2012, Respondent transferred its employee Charging Party Rivas to different and more onerous duties;

(f) On or about dates not presently known to the Regional Director, but which dates are known to Respondent, Respondent placed two written warnings dated November 7, 2012 into the personnel file of its employee Charging Party Rivas.

(g) On or about November 8, 2012, Respondent discharged its employee Charging Party Rivas.

(h) On or about November 29, 2012, Respondent laid off its employee Charging Party Portillo.

(i) On or about November 29, 2012, Respondent laid off its employee Santos Gutierrez.

(j) On or about a date in late November or in early December 2012, the exact date not being presently known to the Regional Director, but known to Respondent, Respondent discharged its employee, Charging Party Portillo.

16. (a) Respondent engaged in the conduct described above in paragraphs 15(d) through 15(g), because Charging Party Rivas engaged in the conduct described above in paragraph 6, and to discourage employee(s) from engaging in these or other concerted activities.

(b) Respondent engaged in the conduct described above in paragraph 15, because the named employees formed, joined, or assisted the Union, and to discourage employees from engaging in these activities.

17. (a) On or about November 16, 2012, Respondent began laying off its employees in the Unit.

(b) The subject set forth above in paragraph 17(a), relates to wages, hours and other terms and conditions of employment of the Unit and is a mandatory subject for the purposes of collective bargaining.

(c) Respondent engaged in the conduct described above in paragraph 17(a), without prior notice to the Union and/or without affording the Union an opportunity to bargain with Respondent with respect to the decision to lay off employees, and/or the effects of this conduct, and/or without first bargaining with the Union to a good-faith impasse.

18. By the conduct described above in paragraphs 7 through 14, 15(d) through 15(g), and 16(a), Respondent has been interfering with, restraining, and coercing employees in the exercise of the rights guaranteed in Section 7 of the Act in violation of Section 8(a)(1) of the Act

19. By the conduct described above in paragraphs 14 and 15, Respondent has been discriminating in regard to the hire or tenure, or terms or conditions of employment, of its employees, thereby discouraging membership in a labor organization, and participation in concerted activities, in violation of Section 8(a)(1) and (3) of the Act.

20. (a) The conduct described above in paragraphs 7 through 16, 18 and 19, is so serious and substantial in character that the possibility of erasing the effects of these unfair labor practices, and of conducting a fair rerun election by the use of traditional remedies is slight, and the employees' sentiments regarding

representation, having been expressed through authorization cards would, on balance, be protected better by issuance of a bargaining order than by traditional remedies alone.

(b) Since on or about October 12, 2012, Respondent has failed and refused to recognize and bargain with the Union as the exclusive collective-bargaining representative of the Unit.

21. By the conduct described above in paragraphs 17 through 20, Respondent has been failing and refusing to bargain collectively and in good faith with the exclusive, collective-bargaining representative of its employees within the meaning of Section 8(d) of the Act in violation of Section 8(a)(1) and (5) of the Act.

22. The unfair labor practices of Respondent described above affect commerce within the meaning of Section 2(6) and (7) of the Act.

REMEDY

WHEREFORE, as part of the remedy for the unfair labor practices alleged above in paragraphs 8 through 20, the Acting General Counsel seeks an Order requiring that the Notice be read to employees during working time, in English and Spanish, by Respondent.

WHEREFORE, as part of the remedy for the unfair labor practices alleged above, the Acting General Counsel seeks an order requiring reimbursement of amounts equal to the difference in taxes owed upon receipt of lump sum payment and taxes that would have been owed had there been no discrimination.

The Acting General Counsel further seeks, as part of the remedy for the unfair labor practices alleged above, an order requiring Respondent to submit the appropriate documentation to the Social Security Administration so that when backpay is paid, it will be allocated to the appropriate periods. The General Counsel further seeks all other relief as may be just and proper to remedy the unfair labor practices alleged.

ANSWER REQUIREMENT

Respondent is notified that, pursuant to Sections 102.20 and 102.21 of the Board's Rules and Regulations; it must file an answer to the consolidated complaint. The answer must be **received by this office on or before March 13, 2012, or postmarked on or before March 12, 2012**. Unless filed electronically in a pdf format, Respondent should file an original and four copies of the answer with this office.

An answer may also be filed electronically by using the E-Filing system on the Agency's website. In order to file an answer electronically, access the Agency's website at http://www.nlrb.gov, click on **E-Gov tab**, select **E-Filing** and then follow the detailed instructions. The responsibility for the receipt and usability of the answer rests exclusively upon the sender. Unless notification on the Agency's website informs users that the Agency's E-Filing system is officially determined to be in technical failure because it is unable to receive documents for a continuous period of more than 2 hours after 12:00 noon (Eastern Time) on the due date for filing, a failure to timely file the answer will not be excused on the basis that the transmission could not be accomplished because the Agency's website was off-line or unavailable for some other reason. The Board's Rules and Regulations require that an answer be signed by counsel or non-attorney representative for represented parties or by the party if not represented. See Sections 102.21. If an answer being filed electronically is a pdf document containing the required signature, no paper copies of the answer need to be transmitted to the Regional Office. However, if the electronic version of an answer to a complaint is not a pdf file containing the required signature, then the E-filing rules require that such answer containing the required signature continue to be submitted to the Regional Office by traditional means within three (3) business days after the date of electronic filing.

Service of the answer on each of the other parties must be accomplished in conformance with the requirements of Section 102.114 of the Board's Rules and Regulations. The answer may not be filed by facsimile transmission. If no answer is filed or if an answer is filed untimely, the Board may find, pursuant to a Motion for Default Judgment, that the allegations in the consolidated complaint are true.

NOTICE OF HEARING

PLEASE TAKE NOTICE that commencing at 10:00 a.m., E.D.T., on the 15th of April 2013, in Hearing Room 5600 East, 1099 14th Street, NW, Washington, DC, and on consecutive days thereafter until concluded, a hearing will be conducted before an administrative law judge of the National Labor Relations Board. At the hearing, Respondent and any other party to this proceeding have the right to appear and present testimony regarding the allegations in this consolidated complaint. The procedures to be followed at the hearing are described in the attached Form NLRB-4668. The procedure to request a postponement of the hearing is described in the attached Form NLRB-4338.

Dated at Baltimore, Maryland this 27th day of February 2013.

(SEAL)

STEVEN L. SHUSTER

Steven L. Shuster, Acting Regional Director
National Labor Relations Board, Region 5
Bank of America Center -Tower II
100 South Charles Street, Suite 600
Baltimore, Maryland 21201

Attachments

Form NLRB-4668
(4-05)

SUMMARY OF STANDARD PROCEDURES IN FORMAL HEARINGS HELD BEFORE THE NATIONAL LABOR RELATIONS BOARD IN UNFAIR LABOR PRACTICE PROCEEDINGS PURSUANT TO SECTION 10 OF THE NATIONAL LABOR RELATIONS ACT

The hearing will be conducted by an administrative law judge of the National Labor Relations Board who will preside at the hearing as an independent, impartial finder of the facts and applicable law whose decision in due time will be served on the parties. The offices of the administrative law judges are located in Washington, DC; San Francisco, California; New York, N.Y.; and Atlanta, Georgia.

At the date, hour, and place for which the hearing is set, the administrative law judge, upon the joint request of the parties, will conduct a "prehearing" conference, prior to or shortly after the opening of the hearing, to ensure that the issues are sharp and clearcut; or the administrative law judge may independently conduct such a conference. The administrative law judge will preside at such conference, but may, if the occasion arises, permit the parties to engage in private discussions. The conference will not necessarily be recorded, but it may well be that the labors of the conference will be evinced in the ultimate record, for example, in the form of statements of position, stipulations, and concessions. Except under unusual circumstances, the administrative law judge conducting the prehearing conference will be the one who will conduct the hearing; and it is expected that the formal hearing will commence or be resumed immediately upon completion of the prehearing conference. No prejudice will result to any party unwilling to participate in or make stipulations or concessions during any prehearing conference.

(This is not to be construed as preventing the parties from meeting earlier for similar purposes. To the contrary, the parties are encouraged to meet prior to the time set for hearing in an effort to narrow the issues.)

Parties may be represented by an attorney or other representative and present evidence relevant to the issues. All parties appearing before this hearing who have or whose witnesses have handicaps falling within the provisions of Section 504 of the Rehabilitation Act of 1973, as amended, and 29 C.F.R. 100.603, and who in order to participate in this hearing need appropriate auxiliary aids, as defined in 29 C.F.R. 100.603, should notify the Regional Director as soon as possible and request the necessary assistance.

An official reporter will make the only official transcript of the proceedings, and all citations in briefs and arguments must refer to the official record. The Board will not certify any transcript other than the official transcript for use in any court litigation. Proposed corrections of the transcript should be submitted, either by way of stipulation or motion, to the administrative law judge for approval.

All matter that is spoken in the hearing room while the hearing is in session will be recorded by the official reporter unless the administrative law judge specifically directs off-the-record discussion. In the event that any party wishes to make off-the-record statements, a request to go off the record should be directed to the administrative law judge and not to the official reporter.

Statements of reasons in support of motions and objections should be specific and concise. The administrative law judge will allow an automatic exception to all adverse rulings and, upon appropriate order, an objection and exception will be permitted to stand to an entire line of questioning.

All exhibits offered in evidence shall be in duplicate. Copies of exhibits should be supplied to the administrative law judge and other parties at the time the exhibits are offered in evidence. If a copy of any exhibit is not available at the time the original is received, it will be the responsibility of the party offering such exhibit to submit the copy to the administrative law judge before the close of hearing. In the event such copy is not submitted, and the filing has not been waived by the administrative law judge, any ruling receiving the exhibit may be rescinded and the exhibit rejected.

Any party shall be entitled, on request, to a reasonable period of time at the close of the hearing for oral argument, which shall be included in the transcript of the hearing. In the absence of a request, the administrative law judge may ask for oral argument if, at the close of the hearing, it is believed that such argument would be beneficial to the understanding of the contentions of the parties and the factual issues involved.

(OVER)

In the discretion of the administrative law judge, any party may, on request made before the close of the hearing, file a brief or proposed findings and conclusions, or both, with the administrative law judge who will fix the time for such filing. Any such filing submitted shall be double-spaced on 8 1/2 by 11 inch paper.

Attention of the parties is called to the following requirements laid down in Section 102.42 of the Board's Rules and Regulations, with respect to the procedure to be followed before the proceeding is transferred to the Board: No request for an extension of time within which to submit briefs or proposed findings to the administrative law judge will be considered unless received by the Chief Administrative Law Judge in Washington, DC (or, in cases under the branch offices in San Francisco, California; New York, New York; and Atlanta, Georgia, the Associate Chief Administrative Law Judge) at least 3 days prior to the expiration of time fixed for the submission of such documents. Notice of request for such extension of time must be served simultaneously on all other parties, and proof of such service furnished to the Chief Administrative Law Judge or the Associate Chief Administrative Law Judge, as the case may be. A quicker response is assured if the moving party secures the positions of the other parties and includes such in the request. All briefs or proposed findings filed with the administrative law judge must be submitted in triplicate, and may be printed or otherwise legibly duplicated with service on the other parties.

In due course the administrative law judge will prepare and file with the Board a decision in this proceeding, and will cause a copy thereof to be served on each of the parties. Upon filing of this decision, the Board will enter an order transferring this case to itself, and will serve copies of that order, setting forth the date of such transfer, on all parties. At that point, the administrative law judge's official connection with the case will cease.

The procedure to be followed before the Board from that point forward, with respect to the filing of exceptions to the administrative law judge's decision, the submission of supporting briefs, requests for oral argument before the Board, and related matters, is set forth in the Board's Rules and Regulations, particularly in Section 102.46 and following sections. A summary of the more pertinent of these provisions will be served on the parties together with the order transferring the case to the Board.

Adjustments or settlements consistent with the policies of the National Labor Relations Act reduce government expenditures and promote amity in labor relations. If adjustment appears possible, the administrative law judge may suggest discussions between the parties or, on request, will afford reasonable opportunity during the hearing for such discussions.

FORM NLRB-4338
(6-90)

UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD
NOTICE

Cases: 5-CA-91629, 5-CA-92016, 5-CA-93890, 5-CA-93906, 5-CA-94080, 5-CA-95609, 5-CA-97256, 5-CA-92279, 5-CA-94082, 5-CA-94478

The issuance of the notice of formal hearing in this case does not mean that the matter cannot be disposed of by agreement of the parties. On the contrary, it is the policy of this office to encourage voluntary adjustments. The examiner or attorney assigned to the case will be pleased to receive and to act promptly upon your suggestions or comments to this end. An agreement between the parties, approved by the Regional Director, would serve to cancel the hearing.

However, unless otherwise specifically ordered, the hearing will be held at the date, hour, and place indicated. Postponements **will not be granted** unless good and sufficient grounds are shown **and** the following requirements are met:

(1) The request must be in writing. An original and two copies must be filed with the Regional Director when appropriate under 29 CFR 102.16(a) or with the Division of Judges when appropriate under 29 CFC 102.16(a).

(2) Grounds must be set forth in **detail;**

(3) Alternative dates for any rescheduled hearing must be given;

(4) The positions of all other parties must be ascertained by the requesting party and set forth in the request; **and**

(5) Copies must be simultaneously served on all other parties (listed below), and that fact must be noted on the request.

Except under the most extreme conditions, no request for postponement will be granted during the three days immediately preceding the date of hearing.

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FORM NLRB-4338
(6-90)

UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD
NOTICE

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